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**From:**

**Sent:** Monday, January 03, 2011 1:58:33 PM

**To:**

**Cc:**

**Subject:** RE: Technical Question

I agree with your generic answers below

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**From:**

**Sent:** Monday, January 3, 2011 1:32 PM

**To:**

**Cc:**

**Subject:** Technical Question

RE: Notice Requirements for Non-TEFRA partnerships.

I have a couple of questions:

1. I'm confused by the following statement: "an audit of a non-TEFRA partnership, where the partner itself is not being audited." Do you mean the partnership is being audited; however, the partner is not being audited?
2. When you say "bind the non-TEFRA partnership", what do you mean? Bind the non-TEFRA partnership in what way?

Generic answer:

The Service can audit a non-TEFRA partnership. They can work with whoever the partnership has designated during that audit. The Service can reach agreements with those individuals on how items should be treated at the partnership level.

The Service then must reach an agreement with each partner of the non-TEFRA entity. This is a key point.

The tax liability for partners of a non-TEFRA entity are determined on an individual basis\*\*. Therefore, a determination cannot be made at the partnership level that will bind the partners. If the Service cannot reach an agreement with a partner, it needs to issue a notice of deficiency to that partner individually.

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\*\* The partnership simply files an information return with the Service (Form 1065). The partnership also sends out K-1s setting forth each partners distributive share of partnership income, expenses, gains and losses. However, none of this is ultimately binding on any partner. They are free to report what they believe is the proper item on their individual return. If the Service comes back and challenges what is reported on a Form 1040, nothing in the Form 1065 or K-1 is binding (although the taxpayer would have an uphill battle in proving their case).